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In The

Supreme Court of the United States

October Term, 1996

NORTHEAST OHIO COALITION FOR THE HOMELESS, RICHARD CLEMENTS, FRUIT OF THE ISLAM OF MUHAMMAD'S MOSQUE NO. 18, AND STEVEN D. HILL,

Petitioners,

vs.

CITY OF CLEVELAND,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

1. Whether an annual $50.00 registration fee that defrays a city's administrative costs in regulating the conduct of peddling on city streets and sidewalks impermissibly burdens First Amendment rights?

LIST OF PARTIES

Petitioners:

Northeast Ohio Coalition for the Homeless

Richard Clements

Fruit of Islam of Muhammad's Mosque No. 18

Steven D. Hill

Respondent:

City of Cleveland

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STATEMENT OF JURISDICTION

Petitioners Northeast Ohio Coalition for the Homeless, Richard Clements, Fruit of Islam of Muhammad's Mosque No. 18, and Steven D. Hill (hereafter collectively referred to as "petitioners") brought this action in the United States District Court for the Northern District of Ohio, Eastern Division, on September 27, 1994, to challenge the constitutionality of an ordinance of the respondent City of Cleveland (hereafter "respondent") that required all peddlers to pay an annual registration fee of fifty dollars ($50.00). On May 3, 1995, the district court ruled that the ordinance violated the First Amendment and permanently enjoined its enforcement. *Northeast Ohio Coalition for the Homeless v. City of Cleveland*, 885 F.Supp. 1029 (N.D.Ohio 1995).

On February 3, 1997, the United States Court of Appeals for the Sixth Circuit reversed the district court and upheld the constitutionality of Cleveland's ordinance. *Northeast Ohio Coalition for the Homeless v. City of Cleveland*, 105 F.3d 1107 (6th Cir. 1997).

On April 10, 1997, the court of appeals denied the petitioners' petition for rehearing and suggestion for rehearing en banc.

Petitioners have invoked this Court's jurisdiction to seek a writ of certiorari under 28 U.S.C. Section 1254(1).

STATEMENT OF THE CASE

Downtown Cleveland city sidewalks are a popular magnet for peddlers and street vendors who peddle

countless varieties of merchandise, food products, and other such items.[1] Cleveland regulates the business of peddling by a license registration system under Chapter 675 of Cleveland's codified ordinances. This registration process enables the local authorities to have some ability to account for the many individuals who conduct their commerce on city streets and sidewalks.[2]

To obtain a peddler's license, an applicant must provide the applicant's name and address, a detailed description of the goods, wares, merchandise, food, or beverages which the applicant intends to sell, two (2) recent photographs, and a copy of the applicant's food service license, if applicable. In return for payment of an annual registration fee of $50.00 that defrays expenses

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[1] Cleveland's ordinance defines "peddling" to include "selling, bartering, or offering or exposing for sale or barter any goods, wares, merchandise, menial tasks, such as painting numbers on curbs, food or beverages from, in, upon, along, or through the highways, streets, or sidewalks of the City, or in the open air or from a temporary shelter or vending device upon private property in the City." § 675.01(a)(2), Cleveland Codified Ordinances.

[2] The petitioners wrongly mischaracterize Cleveland's ordinance when they insist that this case is "about the power of municipalities to erect steep cost barriers to the sidewalk distribution of political and religious 'street' newspapers." (Petition at p. 3) In truth, Cleveland's ordinance does not even purport to be a regulation of speech. It is a regulation of the business of peddling and was drawn into issue only as a consequence of the petitioners' determination to engage in conduct, namely peddling, that Cleveland has a legitimate and indeed unchallenged interest in regulating. And as will be discussed within the argument, the ordinance imposes no impermissible burden on First Amendment rights.

incurred by respondent in processing the application and supervising the licensee, the applicant receives a peddler's license and a laminated identification card with photograph to be kept by the applicant while peddling.

The evidence presented below showed that the $50.00 registration fee authorized by § 675.02(c)(3) of Cleveland's codified ordinances served to defray the administrative expenses associated with processing the application.[3]

The petitioners do not dispute that the conduct in which they are engaged constitutes "peddling" within the meaning of Cleveland's ordinances. Nevertheless, they contend that it is unconstitutional to require them to pay the registration fee.

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[3] A city official identified the particular components of administrative costs associated with such licenses. They included the application process, supervisory costs, license issuance, miscellaneous paper costs, and annual field maintenance. A calculation of such costs done in 1989, which was the most current information available, reflected that those costs accounted for $43.00. The official added that while the City's administrative costs had increased since 1989, the registration fee established to defray those administrative expenses had not increased since the peddler registration fee was set at $50.00 by ordinance on July 24, 1992.

While the petitioners never challenged Cleveland's administrative costs, they cling to the district court's dismissive observation that Cleveland offered no further explanation for its costs. (Petition at 6) In fact, Cleveland offered a full explanation for the various components of its administrative costs, but the district court chose to ignore that explanation and the petitioners appear content to stand on that misstatement.

Petitioner Northeast Ohio Coalition for the Homeless (NEOCH) identified itself as a non-profit advocacy group that publishes *The Homeless Grapevine*. NEOCH sells its newspapers to homeless individuals for ten cents per newspaper, and the individual peddlers in turn offer the newspaper to passers-by for a suggested donation of one dollar, retaining all proceeds received for themselves. Petitioner Richard Clements was identified as a homeless individual who had previously been ticketed for peddling without a license, although those charges were later dropped.

Petitioner Fruit of Islam of Muhammad's Mosque No. 18 identified itself as a non-profit organization whose members sell *The Final Call* for one dollar per newspaper. Members keep thirty cents per newspaper and must remit the remainder to their mosque. They must also donate an additional $50.00 per month to their mosque. Petitioner Steven D. Hill was identified as a *Final Call* vendor who had been ticketed and prosecuted for peddling without a license.

Petitioners challenged only the $50.00 peddler registration fee required by § 675.02(c)(3) of the Codified Ordinances of the City of Cleveland. They claimed that because they were engaged in expression protected by the First Amendment, Cleveland's peddler registration fee represented a "flat tax" on expression in violation of the First Amendment. Petitioners further claimed that they were unable to afford the $50.00 peddler registration fee.[4]

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[4] While petitioners and the district court say that this fact was not disputed by respondent, the truth is that the parties

On cross-motions for summary judgment, the district court declared that Cleveland's ordinance violated the First Amendment and permanently enjoined its enforcement. *Northeast Ohio Coalition for the Homeless v. City of Cleveland*, 885 F.Supp. 1029 (N.D.Ohio 1995).

The court of appeals reversed the lower court and upheld the constitutionality of Cleveland's ordinance. *Northeast Ohio Coalition for the Homeless v. City of Cleveland*, 105 F.3d 1107 (6th Cir. 1997).

ARGUMENT

REASONS FOR DENYING THE WRIT

For reasons that will be discussed in greater detail within the body of the argument, the petition should be denied because the court of appeals correctly applied established precedent to the facts of this case and its analysis is fully consistent with this Court's precedents.

But review should also be denied because nothing about the circumstances of this case merits further review by the Court.

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filed cross-motions for summary judgment with each contending that the facts material to their respective argument entitled that party to judgment as a matter of law. Because the petitioners' alleged inability to pay the $50.00 peddler registration fee was not legally material to determining whether Cleveland's ordinance violated the First Amendment, it was not contested and its truth was assumed solely for purposes of summary judgment motion practice. It is inaccurate, however, to suggest that this fact was conceded.

In particular, the petitioners falsely suggest that they have been "targeted for suppression." Petition at 8. In fact, neither they nor anyone else has been "targeted for suppression." Indeed, Cleveland's peddler registration fee is not a regulation of speech at all but at worst is a content-neutral business practice regulation. The petitioners' misguided attempt to portray themselves as "targets" does not make an otherwise unremarkable case any more significant.

And despite the petitioners' assertion that the appellate court's decision poses a grave threat to the distribution of "street newspapers," the petitioners make no showing of any meaningful conflict among the courts in addressing the issues presented by this case. Given the petitioners' insistence that the distribution of such newspapers "is a growing phenomenon in American cities," see Petition at 3, n.1, it is curious that the petitioners cannot cite a single decision holding that a peddler fee that served to defray the government's administrative expenses was nevertheless unconstitutional in violation of the First Amendment.[5]

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[5] The petition makes passing reference to a number of lower court decisions that supposedly support the petitioners' contention, see Petition at 7, nn. 7-11, but those cases are readily distinguishable from this case. Some of those cases involved constitutionally infirm licensing laws that vested unfettered discretion in government officials, a claim petitioners do not assert here. See, e.g., *Hull v. Petrillo*, 439 F.2d 1184 (2nd Cir. 1971); *Gall v. Lawler*, 322 F.Supp. 1223 (E.D. Wis. 1971); *City of Bowling Green v. Lodico*, 11 Ohio St.2d 135, 228 N.E.2d 325 (1967). Others were decided on grounds wholly unrelated to the constitutional validity of a particular peddling fee. See, e.g., *Zimmerman v. Village of London, Ohio*, 38 F.Supp. 582 (S.D. Ohio

While the petitioners would wrongly attempt to shift the burden to respondent or the lower court to cite decisions directly on point, the reality is that there appear to be no other cases directly on point. Consequently, the lower court properly applied settled legal principles to these facts. Nothing in the petition provides any basis to find that the Sixth Circuit's reasoned disposition of this case merits further review by this Court.

The petition should be denied.

I. CLEVELAND'S PEDDLER REGISTRATION FEE DOES NOT VIOLATE THE FIRST AMENDMENT.

Cleveland's peddler registration fee serves to defray the city's administrative expenses in regulating the business of peddling on city streets and sidewalks. This legitimate regulation of conduct does not become constitutionally offensive simply because the petitioners claim that their financial solicitations enjoy a measure of protection under the First Amendment. It likewise does

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1941)(invalidating ordinance as applied to distributor of material on private property); *City of Cincinnati v. Mosier*, 61 Ohio App. 81, 22 N.E.2d 418 (1939) (construing ordinance so as not to apply to peddler's conduct).

The only cases which purport to address peddling fees either did not address whether such fees are permissible to defray administrative expenses or did not present an adequate record to relate the challenged fee to the government's administrative expenses. See, e.g., *Hull v. Petrillo, supra; Gall v. Lawler, supra.* See also, *Holy Spirit Assn. for the Unification of World Christianity v. Hodge*, 582 F.Supp. 592 (N.D. Texas 1984).

None of these decisions cast any doubt on the sound analysis rendered by the Sixth Circuit on the facts of this case.

not become offensive if the petitioners claim to be unable to afford the fee or simply choose not to pay it. Because Cleveland's ordinance is a content-neutral regulation that is narrowly tailored to serve a significant governmental interest that leaves open ample alternative channels of communication, the registration fee does not violate the First Amendment.

While petitioners insist that Cleveland's registration fee operates "as a precondition to exercising the First Amendment right to disseminate ideas on public sidewalks," Petition at 11, they seriously misconstrue Cleveland's ordinance.

First, it is readily apparent that the ordinance does not purport to be a regulation of speech at all but is simply a regulation of the business of peddling or soliciting. To the extent the ordinance has an incidental effect on speech because of the matters the petitioners choose to peddle, the ordinance is plainly content-neutral.[6]

And while solicitations for money may involve speech interests that are entitled to a measure of protection under the First Amendment, see *Riley v. Nat'l Fed'n of the Blind of North Carolina, Inc.*, 487 U.S. 781, 788-789 (1988); *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980), it is also true that the conduct associated with solicitations implicates significant governmental interests that permit a greater measure

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[6] It should be noted that a peddler's license is issued upon completion of the application and payment of the fee. Petitioners do not contend that issuance is subject to improper governmental discretion.

of regulation than might otherwise be allowed for the mere dissemination of ideas without the concurrent appeal for donations.[7]

In *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992), the Court upheld a regulation that prohibited solicitations in the interior of an airport terminal. Summarizing the disruptive elements of conduct that justified an outright ban on solicitation, the Court observed:

> We have on many prior occasions noted the disruptive effect that solicitation may have on business. Solicitation requires action by those who would respond: The individual solicited must decide whether or not to contribute (which itself might involve reading the solicitor's literature or hearing his pitch), and then, having decided to do so, reach for a wallet, search it for money, write a check, or produce a credit card. Passengers who wish to avoid the solicitor may have to alter their path, slowing both themselves and those around them. The result is that the normal flow of traffic is impeded. . . .
>
> In addition, face-to-face solicitation presents risks of duress that are an appropriate target of regulation. The skillful, and unprincipled, solicitor can target the most vulnerable, including those accompanying children or those suffering

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[7] This case does not involve the question of whether speech receives less protection under the First Amendment if it has a commercial dimension to it. But irrespective of the measure of protection afforded such speech, the conduct associated with the commercial element does impact on the significant government interest in regulating such conduct.

> physical impairment and who cannot easily avoid the solicitation. The unsavory solicitor can also commit fraud through concealment of his affiliation or through deliberate efforts to short-change those who agree to purchase. Compounding this problem is the fact that, in an airport, the targets of such activity frequently are on tight schedules. This in turn makes such visitors unlikely to stop and formally complain to airport authorities. As a result, the airport faces considerable difficulty in achieving its legitimate interest in monitoring solicitation activity to assure that travelers are not interfered with unduly.

Id., 505 U.S. at 683-684 (citations and internal quotation marks omitted). See also *id.* at 698 (O'Connor, J., concurring) ("As residents of metropolitan areas know from daily experience, confrontation by a person asking for money disrupts passage and is more intrusive and intimidating than an encounter with a person giving out information.")(quoting *United States v. Kokinda*, 497 U.S. 720, 734 (1990)); *id.* at 703-707 (Kennedy, J., concurring) (agreeing that ban on solicitations for immediate payment of money was narrowly tailored to serve significant government interest of preventing fraud and duress associated with such conduct).

In the instant case, Cleveland's peddler registration program regulates the conduct of peddling and other such solicitations. It does not go so far as to ban these practices but instead merely requires such persons to register and pay the same fee any other peddler must pay to defray the administrative costs incurred to maintain the program. It places no restriction on leafletting or any

other manner of disseminating ideas unaccompanied by sales or solicitations. So to the extent that the petitioners wrongly contend that Cleveland's ordinance operates as a precondition to the dissemination of ideas, they misstate the purpose and effect of the ordinance.

But even if Cleveland's peddler registration fee were understood to be a content-neutral regulation of speech, the fee does not violate the First Amendment and was properly upheld because it serves to defray the expenses incurred by Cleveland in administering a valid regulatory scheme and the appellate court's analysis below is fully consistent with this Court's precedents.

In *Cox v. New Hampshire*, 312 U.S. 569 (1941), the Court upheld a license fee imposed in connection with the granting of a permit for parades or processions on public streets. Daily fees of as much as $50.00 were required to be paid in advance. *Cox*, 312 U.S. at 571, n. 1. Holding that the license fee was "not a revenue tax, but one to meet the expense incident to the administration of the Act and to the maintenance of public order in the matter licensed," the Court concluded that "[t]here is nothing contrary to the Constitution in the charge of a fee limited to the purpose stated." *Id.*, 312 U.S. at 577.

By contrast, the tax invalidated two years later in *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), was "not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities" of solicitors, such as "the expense of protecting those on the streets and at home against the abuses of solicitors." *Murdock*, 319 U.S. at 113-114; *id.*, at 116. In marked contrast to Cleveland's peddler registration program, the *Murdock* tax was not tied to "a registration system under which those going

from house to house are required to give their names, addresses and other marks of identification to the authorities." *Murdock*, 319 U.S. at 113. Instead, the *Murdock* tax was found to be a flat tax that was unrelated to the scope of the activities of the speakers or to their realized revenues or to the expenses of administering a valid regulatory scheme, and thus was used as a condition of their right to speak. Accord *Follet v. McCormick*, 321 U.S. 573 (1944) (invalidating license tax that operated as a prior restraint on free exercise of religion).

Thus, the fee in *Cox* was upheld because it was reasonably related to defray the government's expenses in administering a valid regulatory scheme whereas the tax in *Murdock* was not reasonably related to the government's expenses in administering a valid regulatory scheme and instead represented only a revenue-generating tax on expression. In this Court's words, "[t]he tax at issue in *Murdock* was invalid because it was unrelated to any legitimate state interest, not because it was of a particular size." *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 137 (1992).[8]

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[8] Petitioners' continued reliance on *Jimmy Swaggart Ministries v. Board of Equalization of California*, 493 U.S. 378 (1990), is mystifying. In that case, the Court expressly limited *Murdock* and *Follet* to apply "only where a flat license tax operates as a prior restraint on the free exercise of religious beliefs." *Id.*, 493 U.S. at 389. The Court ultimately upheld California's sales and use tax, contrasting it from the *Murdock* tax that was " 'in no way apportioned' to the 'realized revenues.' " *Id.*, 493 U.S. at 390 (quoting *Murdock*, 319 U.S. at 113-114). Thus, the *Jimmy Swaggart* court's distinction and indeed express limitation of *Murdock* hardly supports the petitioners' claims here.

Reviewing these precedents, the court of appeals below fairly observed:

> The lesson to be gleaned from *Cox* and *Murdock* is that an ordinance requiring a person to pay a license or permit fee before he can engage in a constitutionally protected activity does not violate the Constitution so long as the purpose of charging the fee is limited to defraying expenses incurred in furtherance of a legitimate state interest.

105 F.3d at 1109-1110. Because Cleveland's peddler registration fee served to defray the expenses incurred in administering a valid regulatory scheme, the court of appeals correctly upheld the fee.

For their part, the petitioners say the appellate court decision "flouts" *Murdock* and supposedly consigns it to "oblivion." In truth, the court simply found the instant case to be distinguishable from *Murdock* but indistinguishable from *Cox*.

The petitioners wrongly criticize the appellate court for relying on cases involving parades such as *Cox* and *Stonewall Union v. City of Columbus*, 931 F.2d 1130 (6th Cir.), *cert. denied*, 502 U.S. 899 (1991).

But contrary to petitioners' assertion, *Murdock* did not distinguish *Cox* on the grounds that one involved a parade and the other sidewalk solicitation. According to *Murdock*, *Cox* involved "state regulation of the streets to protect and insure the safety, comfort, or convenience of the public." *Murdock*, 319 U.S. at 116. No comparable

government interest was advanced in *Murdock*. The *Murdock* court added that unlike the fee in *Cox*, the *Murdock* tax was

> not merely a registration ordinance calling for an identification of the solicitors so as to give the authorities some basis for investigating strangers coming into the community. And the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuses of solicitors.

Murdock, 319 U.S. at 116.

In short, the only consequential distinction between *Cox* and *Murdock* is that the fee in *Cox* was reasonably related to serve a government interest of defraying the administrative costs of a legitimate regulation whereas the tax in *Murdock* was not shown to be reasonably related to serve a government interest. See *Forsyth, supra*, 505 U.S. at 137. *Murdock* draws no constitutional distinction between the manner of expression or where it occurs. To the extent that a regulation of pure speech such as a parade does not violate the First Amendment, Cleveland's regulation of the business of peddling is seemingly even more removed from the core concerns of the First Amendment.

In this case, the court of appeals correctly found that Cleveland's peddler registration fee was narrowly tailored to serve a significant governmental interest. That court noted:

> [T]he city has an interest in giving its citizens some assurance that it can identify and pursue peddlers who do engage in fraudulent or

> unlawful conduct. This ordinance, by requiring street peddlers to register with the city and wear identification cards while they are engaged in peddling, furthers the aforementioned interests, and the administrative costs incident to the implementation of an ordinance embodying compelling governmental interests are defrayed by the fee.
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> * * *
>
> Like the regulations upheld in *Cox* and *Stonewall*, Cleveland's peddlers' ordinance and the license fee it imposes are narrowly tailored to further a legitimate governmental interest. The fee is reasonably related to the costs of administering the ordinance, and the licensing program helps to prevent fraud by solicitors. In addition, the program enables the city to offer some protection to individuals who donate money to street peddlers. Moreover, unlike the fee in *Forsyth County*, the fifty dollar license fee in this case is content-neutral – all peddlers must pay it regardless of the source and nature of the products they peddle. Accordingly, the city's fee does not unduly or impermissibly burden [petitioners'] First Amendment rights.

105 F.3d at 1110.

Petitioners do not dispute that Cleveland's regulation is narrowly tailored to serve a government interest. They imply that there could be no fraud in the distribution of their street newspapers, see Petition at 9, n. 14, but they offer no comforting explanation why some solicitors may practice fraud or duress but others do not.

While citizen complaints about a registered peddler can at least be investigated, complaints about an unregistered peddler may be incapable of investigation. Regulating such conduct necessarily has administrative costs associated with it. Cleveland's fee is narrowly tailored to serve that interest.

Moreover, petitioners are wrong when they suggest that the sidewalks are closed to the dissemination of their ideas. While they may not engage in peddling without complying with Cleveland's legitimate regulatory scheme, they remain free to disseminate their views on sidewalks. But conduct that is the legitimate subject of regulation does not become immune from regulation simply because it occurs on a sidewalk.

The court of appeals correctly determined that Cleveland's peddler registration fee imposes no undue or impermissible burden on First Amendment rights. Accordingly, further review of that decision is not warranted and the petition should be denied.

II. THERE IS NO CONFLICT AMONG THE COURTS OF APPEALS.

Petitioners wrongly assert that the decision below conflicts with *Hull v. Petrillo*, 439 F.2d 1184 (2nd Cir. 1971). Petitioners' contention is wholly without merit.

In *Hull*, an ordinance gave the mayor discretion to grant licenses "to such persons as he shall deem proper." *Hull*, 439 F.2d at 1185. The Second Circuit Court of Appeals ruled that "the sweeping power granted the mayor by the terms of the ordinance to determine who is

to receive a license goes well beyond the level of discretion permitted city officials in regulating the exercise of first amendment rights." *Id.*, 439 F.2d at 1186.

In contrast, there is no claim in the instant case that city officials have such unbridled discretion.

Moreover, the alternate grounds of *Hull* on which the petitioners now rely was subsequently repudiated within the Second Circuit. In *United States Labor Party v. Codd*, 527 F.2d 118 (2nd Cir. 1975), the court upheld a provision of the New York Administrative Code which established a five-dollar fee for the issuance of a daily permit to use a sound amplification device. Following *Cox v. New Hampshire*, the court concluded that the fee defrayed the administrative costs associated with enforcement of the ordinance. The court added:

> *Hull v. Petrillo*, 439 F.2d 1184 (2nd Cir. 1971), which did not mention *Cox v. New Hampshire, supra*, sustained a complaint by the Black Panthers based on the claim that the police were *harassing* them in the sale of their newspapers. The discussion of the constitutionality of the fee required for a license which was "granted by the mayor 'to such persons as he shall deem proper,' " *id.* at 1185-86, was, in the circumstances, *obiter.*

United States Labor Party v. Codd, 527 F.2d at 120, n. 6 (emphasis in original).

In short, *Hull* is of dubious authority within its own circuit. It hardly provides a basis to find a legal conflict

with the sound reasoning employed by the Sixth Circuit Court of Appeals in this case.[9]

Because petitioners have not shown any legal conflict among the circuits on the question presented, their petition should be denied.

III. A PERMISSIBLE REGISTRATION FEE DOES NOT BECOME UNLAWFUL DUE TO AN APPLICANT'S CLAIMED INABILITY TO PAY.

The court of appeals correctly determined that a fee that serves to defray the government's administrative and regulatory expenses does not unduly or impermissibly burden First Amendment rights. Petitioners maintain that even if Cleveland's annual peddler fee does defray the city's administrative expenses, the petitioners' claimed inability to pay the annual fee causes the fee to operate as a "forum-access admission price" in violation of the First Amendment. Petition at 17. Their argument is without merit.

First, petitioners are wrong in their characterization because Cleveland's peddler registration fee is a business regulation and not a speech regulation. As such, it is not a

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[9] Petitioners' passing reference to *Bery v. New York*, 97 F.3d 689 (2nd Cir. 1996), *cert. denied*, 117 S.Ct. 2408 (1997), does not support their suggestion of a conflict among the circuits. In that case, the court struck down a city regulation under which a numerical cap of vendors licenses was selectively enforced. No such claim is made by petitioners here and that case did not address the constitutionality of a fee as is presented here. *Bery* poses no conflict with the Sixth Circuit's decision.

"forum-access" regulation but a business practice regulation.

And while the petitioners erroneously insist that their inability to pay the fee is an undisputed fact, see *supra*, at 4, n. 4, they offer no authority for the proposition that a fee like the one here that is otherwise lawful to defray the government's administrative expenses becomes constitutionally offensive for a claimed inability to pay. This inability to pay occurs not as a result of any adverse government action but rather because of an individual's religious beliefs or personal difficult circumstances. In any event, the petitioners cite no authority to support the proposition that a fee that is otherwise valid becomes invalid under these circumstances.[10]

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[10] Petitioners rely in part on cases decided before this Court stepped in to resolve a conflict concerning the constitutionality of charging a fee for a speaker in a public forum in *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123 (1992). See Petition at 21, n. 36 (citing *Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515 (11th Cir. 1985), *cert. denied*, 475 U.S. 1120 (1986); *Invisible Empire of the Knights of the Ku Klux Klan v. City of West Haven*, 600 F.Supp. 1427 (D.Conn. 1985)). Those cases involved circumstances where the fee depended on the controversial nature of the speech and the anticipated audience response to the speech. The *Forsyth County* court held such content-based fees to be unlawful.

But the *Forsyth County* court went on to note that the size of the fee is not determinative. It pointed out that the tax in *Murdock* "was invalid because it was unrelated to any legitimate state interest, not because it was of a particular size." *Forsyth County*, 505 U.S. at 137. By the same token, the level of the fee in *Forsyth County* was irrelevant because "[a] tax based on the content of speech does not become more constitutional because it is a small tax." *Id.*, 505 U.S. at 136.

The petitioners are wrong when they insist that Cleveland's ordinance denies them access to sidewalks. Petition at 18. As noted previously, petitioners are not denied access to disseminate their views on city sidewalks. At the same time, they may not engage in the conduct of peddling without complying with Cleveland's legitimate regulatory scheme. While petitioners' noncompliance with Cleveland's registration system may prevent them from engaging in all the conduct they wish to practice, "[t]he First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640, 647 (1981).

Finally, petitioners' attempt to question the precision of the amount of Cleveland's fee does not merit review. As noted *supra*, at 3, n. 3, the annual $50.00 registration fee reasonably serves to defray the various cost components Cleveland incurs to administer the program. Under these circumstances, the court of appeals correctly found that Cleveland's fee was reasonably related to the expenses incident to the administration of the ordinance and to the maintenance of public safety and order and was neither unreasonable nor excessive. See 105 F.3d at 1110.

Cleveland's regulation of the business of peddling merchandise does not impermissibly burden First Amendment rights. The court of appeals correctly found that Cleveland's peddler registration fee was narrowly tailored to serve a significant government interest of administering Cleveland's peddler program and defraying the expenses incurred in administering that program.

Because this case does not present issues warranting review by the Court, the petition should be denied.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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